

The Honorable Richard A. Jones

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf of  
himself and other similarly situated,

Plaintiffs,

v.

DONALD TRUMP, President of the United  
States, *et al.*,

Defendants.

CASE NO. C17-00094RAJ

**JOINT STATUS REPORT  
PURSUANT TO APRIL 28, 2020  
AND MAY 14, 2020 ORDERS  
(DKT. NOS. 352, 355)**

Pursuant to the Court's May 14, 2020, Order (Dkt. No. 355), counsel for the parties met and conferred by telephone and also exchanged email correspondence. Pursuant to that order and the Court's April 28, 2020 order (Dkt. No. 352), the parties now submit this joint status report.

**Discovery Motions**

The parties are in the midst of negotiations toward resolution of the discovery issues raised in the now-stricken discovery motions. The status of these negotiations is outlined below:

Dkt No. 289 (Defendants' Motion to Compel Answers to their Interrogatories):

In an attempt to resolve the issues in this motion, Plaintiffs offered to do the following: By June 11, 2020, identify for Defendants those documents that Plaintiffs identified or compiled for potential use at the depositions but that they did not use, regardless of the reason; by June 17, 2020,

1 connect a sample subset of these documents, the documents Plaintiffs have already used as  
 2 deposition exhibits, and the documents identified as support in Plaintiffs' experts' reports to each of  
 3 their claims in order to provide Defendants with examples of the types of evidence supporting  
 4 Plaintiffs' claims. In addition, Plaintiffs proposed that the parties agree that the schedule for pretrial  
 5 statements be extended further from trial than by rule to allow for more advance notice than typical  
 6 of trial exhibits, and that the parties will negotiate in good faith that deadline once a trial date is set.

7 Defendants have yet to commit that Plaintiffs' proposals are sufficient to satisfy them that the  
 8 issues raised in this motion can be deemed fully resolved. Specifically, Defendants are dissatisfied  
 9 that after offering a "sampling" of "categories," and the Court's suggestion that we consider that  
 10 proposal further, Plaintiffs will not commit to identifying additional samples of any evidence that  
 11 supports their claims but is not represented by the samples they link to their claims by June 17. The  
 12 parties will continue to discuss the issues in the hope that full resolution can be achieved without the  
 13 need for court intervention. The parties will report back to the Court by June 26, 2020, if any issue  
 14 identified in this motion has not been fully resolved.

15 Dkt. No. 309 (Plaintiffs' Motion to Amend the Protective Order to Contact Class Notice  
 16 Responders):

17 The parties continue to work towards a compromise on this motion and have reached some  
 18 areas of agreement. The parties agree that Plaintiffs' counsel should (at least initially) contact  
 19 everyone who responded to the notice. The parties agree that there will be an agreed-upon preamble  
 20 to the initial contact by Plaintiffs' counsel, and Plaintiffs have made a proposal for this preamble and  
 21 await Defendants' approval or comments on same. The parties also agree that Plaintiffs will only  
 22 seek to offer testimony from six or fewer individuals who responded to the notice. Yet although the  
 23 parties have engaged in extensive dialogue, areas of disagreement remain. The parties request an  
 24 opportunity to discuss these points of disagreement with the Court at the hearing set for May 28, in  
 25 the hope that additional Court guidance will help them resolve these remaining issues on this motion.  
 26  
 27  
 28

1 Dkt. Nos. 312 & 316 (Plaintiffs' Motion to Compel, Challenging Redactions in the A-Files  
 2 and 41 Other Documents):

3 Since the last conference with the Court, Plaintiffs have provided to Defendants annotated  
 4 versions of the A-Files and 41 documents. Plaintiffs' annotations indicate Plaintiffs' positions in  
 5 comment bubbles on the redactions that Plaintiffs challenge. Defendants have committed to  
 6 reevaluate the propriety of those redactions and either remove the redactions or engage in further  
 7 telephonic discussions to describe the redactions and try to address Plaintiffs' concerns. The parties  
 8 will report back to the Court by June 26, 2020, if any issues in either of these two motions has not  
 9 been fully resolved through this process. For any documents from which Defendants agree to  
 10 remove redactions, re-production of those documents will occur no later than July 3, 2020.

### 11 **Other Matters**

12 In addition to meeting and conferring on the four motions, the parties continue to work on  
 13 several other aspects of this case, as required by this Court's order of March 26, 2020. Dkt. No. 349.  
 14 In compliance with this separate Order, the parties have met and conferred, and report the status of  
 15 such other work performed during the suspension of the schedule relative to the ongoing pandemic.  
 16 In particular, since last reporting to the Court on April 27, 2020, the parties continue to negotiate on  
 17 other outstanding discovery issues, including disagreements with respect to whether Plaintiffs' Rule  
 18 30(b)(6) notice to USCIS is sufficiently particular and with respect to clawbacks of some documents  
 19 and deposition testimony requested by Defendants. The parties anticipate that the discussions with  
 20 respect to the redactions (in context of the issues in Dkt. Nos. 312 & 316) may assist in resolving  
 21 those issues as well.

22 With regard to the scope of Plaintiffs' proposed Rule 30(b)(6) depositions of USCIS,  
 23 Defendants volunteered to prepare a document that summarizes the matters on which it is believed  
 24 that the parties have already reached agreement and the matters where the parties still need to close a  
 25 gap between their positions. It is hoped that this document, which Defendants plan to send to  
 26 Plaintiffs' counsel this week, will serve as the blueprint for a final agreement soon on the scope of  
 27 this deposition. In addition to working with Plaintiffs' to negotiate the scope of Plaintiffs' 30(b)(6)  
 28

1 Notice, Defendants continue to prepare potential designee(s) to the extent they believe possible  
2 without resolution of the disputes.

3 In response to Plaintiff's nine expert reports, Defendants have thus far notified Plaintiffs of  
4 the subject area expertise of one of its anticipated responsive experts, and have since provided  
5 Plaintiffs with further notice that they anticipate having two or three additional expert witnesses.  
6 Defendants have yet to provide responsive expert reports to Plaintiffs. Defendants report that, while  
7 much progress has been made toward the full completion of the reports, Defendants' assert that their  
8 capacity to complete work by the original deadline has been substantially impaired. That is,  
9 Defendants' assert that the pandemic-related crisis hit at the very outset of our development of the  
10 Government's responsive expert case, and for many weeks thereafter disrupted the government's  
11 ability to reach out to potential experts and consult as necessary with government-related  
12 components reprioritized to meet the COVID-19 crisis. The original deadline for responsive expert  
13 reports was March 28, 2020. Plaintiffs do not believe the current conditions have necessitated the  
14 length of delay that has occurred. Furthermore, Defendants have informed Plaintiffs that in addition  
15 to working to prepare responsive expert reports, Defendants also will likely supplement their 26(a)  
16 disclosures with factual rebuttal witnesses to address what they contend to be new factual  
17 information set forth in Plaintiffs' expert reports. Plaintiffs object to this belated production of  
18 factual evidence well after the close of fact discovery. The parties will be meeting and conferring on  
19 this issue if and when Defendants provide such disclosures.

20 Finally, Defendants recently reported to Plaintiffs that tabular data for FY 2013 – 2019 that  
21 Defendants produced with their supplemental initial disclosures was inaccurate, in that some  
22 applications handled under CARRP prior to June 21, 2017, were identified as non-CARRP.  
23 Defendants explained aspects of the error to Plaintiffs, and are working to produce corrected tabular  
24 data. This data was analyzed by the parties' respective statistics expert witnesses, was used at one  
25 prior deposition, and was anticipated to be used at the Rule 30(b)(6) deposition of USCIS that  
26 Plaintiffs noted, and thus re-work may be required to address the error in the data Defendants  
27 produced. Until Defendants produce the corrected data, the parties, but especially Plaintiffs, do not  
28 know the full impact the data correction will have on the schedule and further discovery. Yet, to the

best of their abilities, the parties have tried to account for this issue in the proposed schedule. Defendants have notified Plaintiffs that they are willing to produce the anonymized underlying data corresponding to the corrected tabular data being provided for FY 2013 – FY 2019.

### Case Schedule

The parties propose the following deadlines be set forth in a new scheduling order:

1. Defendants Produce Updated Data Tables – June 12th
2. Plaintiffs' Contact with Class Notice Responders
  - Finalize Agreement on Procedure and Schedule related to Contact with Notice Responders—May 29th
  - Stipulated Motion to Modify the PO related to Contact with Notice Responders or Notice to Court that Issue Requires Court Resolution—June 5th
3. Resolution on Other Unresolved Issues:
  - Scope of the 30(b)(6) Notice—June 26th
  - Motion on A Files & 41 documents—June 26th
  - Clawbacks—June 26th
4. Expert Reports:
  - a. Plaintiffs Provide Any Updates to Their Non-Statistical Experts Reports: July 1st
  - b. Defendants' Responsive Non-Statistical Expert Reports: July 10<sup>th</sup>, if none of the relevant Plaintiffs' Non-Statistical Expert Reports are substantively updated/supplemented by July 1st; July 22<sup>nd</sup> if any of the relevant Plaintiffs' Non-Statistical Expert Reports are substantively updated/supplemented. (Substantive change means changing or adding opinions or assumptions, additional uses of the data or evidence, adding additional data sets or evidence not previously offered to support an opinion. Merely substituting the corrected data for the old data or removing reference to the old data will not be considered a substantive change, though.)
  - c. Updated/Supplemental Expert Reports of Statistical Experts – July 17th
  - d. Responsive Expert Reports, if any, of Statistical Experts - August 7th

5. Remaining Production on the Pending/Stricken Motions (Other than the Class Notice Motion) and/or Plaintiffs present request to Court on remaining disputes as to redactions to the A Files or the 41 documents – July 3rd

6. Defendants' Certification of Administrative Record – July 3rd

7. Resume Depositions (by remote means if in-person depositions not yet feasible)—  
July 13th

8. Conclusion of all discovery, except the deposition of Mr. Ostadhassan which shall be left open until such time as international travel is possible — September 2nd

9. Parties to Explore Settlement/Mediation (without prejudice to doing so earlier, of course)--December 18th

10. Dispositive Motions filed (and noted for hearing on seventh Friday thereafter)—  
Thursday, October 22nd (thus noted for December 18th)

11. Briefing schedule on Motions for Summary Judgment

- Plaintiffs' motion for summary judgment—October 22nd
- Defendants' cross-motion and opposition—November 16th
- Plaintiffs' opposition and reply— December 8th
- Defendants' reply—December 18th
- Noting Date for Cross-Motions—December 18th

It is the understanding of the parties that the Court requested that they only propose a case schedule through the dispositive motion stage. The parties, of course, will meet and confer and propose a schedule for trial and other pretrial dates if the Court would like them to do so at this time.

As noted above, once a trial date is set, the parties have agreed to negotiate in good faith an advanced schedule for exchange of pretrial statements.

1 DATED: May \_\_, 2020.

2 For Defendants:

3 JOSEPH H. HUNT  
4 Assistant Attorney General  
5 Civil Division  
6 U.S. Department of Justice

ANDREW C. BRINKMAN  
Senior Counsel for National Security  
National Security Unit  
Office of Immigration Litigation

6 AUGUST FLENTJE  
7 Special Counsel  
8 Civil Division

VICTORIA M. BRAGA  
Trial Attorney  
Office of Immigration Litigation

8 ETHAN B. KANTER  
9 Chief, National Security Unit  
10 Office of Immigration Litigation  
11 Civil Division

JESSE BUSEN  
Counsel for National Security  
Office of Immigration Litigation

11 BRIAN T. MORAN  
12 United States Attorney

BRENDAN T. MOORE  
Trial Attorney  
Office of Immigration Litigation

13 /s/ Brian C. Kipnis  
14 BRIAN C. KIPNIS  
15 Assistant United States Attorney  
16 Western District of Washington

MICHELLE R. SLACK  
Trial Attorney  
Office of Immigration Litigation

16 LEON B. TARANTO  
17 Trial Attorney  
18 Torts Branch  
19 Civil Division

KATHRYN DAVIS  
Senior Counsel  
Federal Programs Branch  
Civil Division

LINDSAY M. MURPHY  
Senior Counsel for National Security  
Office of Immigration Litigation

*Counsel for Defendants*

For Plaintiffs:

s/ Jennifer Pasquarella  
Jennifer Pasquarella (admitted pro hac vice)  
**ACLU Foundation of Southern California**  
1313 W. 8th Street  
Los Angeles, CA 90017  
Telephone: (213) 977-5236  
jpasquarella@aclusocal.org

s/ Matt Adams  
Matt Adams #28287  
**Northwest Immigrant Rights Project**  
615 Second Ave., Ste. 400  
Seattle, WA 98122  
Telephone: (206) 957-8611  
matt@nwirp.org

s/ Stacy Tolchin  
Stacy Tolchin (admitted pro hac vice)  
**Law Offices of Stacy Tolchin**  
634 S. Spring St. Suite 500A  
Los Angeles, CA 90014  
Telephone: (213) 622-7450  
Stacy@tolchinimmigration.com

s/ Hugh Handeyside  
s/ Lee Gelernt  
s/ Hina Shamsi  
Hugh Handeyside #39792  
Lee Gelernt (admitted pro hac vice)  
Hina Shamsi (admitted pro hac vice)  
**American Civil Liberties Union Foundation**  
125 Broad Street  
New York, NY 10004  
Telephone: (212) 549-2616  
lgelernt@aclu.org  
hhandeyside@aclu.org  
hshamsi@aclu.org

s/ Harry H. Schneider, Jr.  
s/ Nicholas P. Gellert  
s/ David A. Perez  
s/ Heath L. Hyatt  
s/ Paige Whidbee  
Harry H. Schneider, Jr. #9404  
Nicholas P. Gellert #18041  
David A. Perez #43959  
Heath L. Hyatt #54141  
**Perkins Coie LLP**  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
Telephone: 206.359.8000  
HSchneider@perkinscoie.com  
NGellert@perkinscoie.com  
DPerez@perkinscoie.com  
HHyatt@perkinscoie.com  
PWhidbee@perkinscoie.com

s/ Kristin Macleod-Ball  
Kristin Macleod-Ball (admitted pro hac vice)  
**American Immigration Council**  
1318 Beacon Street, Suite 18  
Brookline, MA 03446  
Telephone: (857) 305-3722  
kmacleod-ball@immcouncil.org

s/ John Midgley  
John Midgley #50517  
**ACLU of Washington Foundation**  
P.O. Box 2728  
Seattle, WA 98111  
Telephone: (206) 624-2184  
jmidgley@aclu-wa.org

*Counsel for Plaintiffs*